

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:13-cr-00149-KJD-CWH

Plaintiff,

V.

THOMAS LEWIS,

**ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE**

Defendant.

Before the Court is Defendant's Motion for Order Reducing Sentence or Modifying Judgment under 18 U.S.C. § 3582(c)(1)(A)(i) (#189). The government responded in opposition (#191) to which Defendant replied (#193).

I. Factual and Procedural Background

On April 13, 2013, Defendant Thomas Lewis (“Lewis”) robbed a bank. (#191, at 2). Lewis entered the bank alongside one of his co-defendants. Id. Both men wore multiple layers of clothing, including masks, as they walked into the bank, guns in hand. Id. Lewis’s co-defendant jumped over the counter and demanded that everyone “get down and not move.” The men fled the bank with over \$16,000. Id. Eventually, Lewis and his co-defendants were apprehended and arrested. Id. On March 26, 2014, Lewis’s trial began. Id. On the second day of trial, Lewis pleaded guilty. The Court sentenced Lewis to 57 months in prison for the bank robbery and a consecutive 84 months for the weapons charge, for a total of 141 months. Id. at 3. Lewis received two additional points on his Criminal History Category because he was under sentence when he committed this offense. Id. Only three out of Lewis’s 13 prior convictions added other points to his Criminal History Category because the other convictions fell outside of the fifteen-year applicable time period under U.S.S.G. §§ 4A1.2(e)(1), (3). (#193, at 5). Lewis’s past convictions include battery upon a police officer, driving under the influence and causing bodily

1 injury, possession of a firearm by a felon, driving under the influence without causing bodily
 2 injury, and multiple misdemeanors for traffic violations, possession of open alcohol containers
 3 and illegal fireworks, and failure to appear.

4 On May 27, 2020, Lewis applied for compassionate release with the warden of FCI
 5 Victorville, Medium I where he is incarcerated. (#189, at 9). Lewis did not receive a response
 6 from the warden and filed this motion on July 17, 2020. Id. at 9, 37. The government opposes
 7 Lewis's release because he has served only about 65% of his sentence and has not proven that he
 8 is no longer a danger to the public. (#191, at 3).

9 II. Legal Standard

10 The district court that imposed sentence on a criminal defendant has authority to modify
 11 the term of imprisonment under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), as
 12 amended by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (Dec. 21, 2018).
 13 That statute provides, in relevant part:

14 [T]he court, upon motion of the Director of the Bureau of Prisons,
 15 or upon motion of the defendant after the defendant has fully
 16 exhausted all administrative rights to appeal a failure of the Bureau
 17 of Prisons to bring a motion on the defendant's behalf or the lapse of
 18 30 days from the receipt of such a request by the warden of the
 19 defendant's facility, whichever is earlier, may reduce the term of
 20 imprisonment (and may impose a term of probation or supervised
 21 release with or without conditions that does not exceed the unserved
 22 portion of the original term of imprisonment), after considering the
 23 factors set forth in section 3553(a) to the extent that they are
 24 applicable, if it finds that [...]extraordinary and compelling reasons
 25 warrant such a reduction [...] and that such a reduction is consistent
 26 with applicable policy statements issued by the Sentencing
 27 Commission[.]

22 18 U.S.C. §§ 3582(c)(1)(A), 3582(c)(1)(A)(i).

23 If the defendant has exhausted administrative remedies, the analysis is twofold. First, the
 24 Court must consider the same factors applicable at the original sentencing, enumerated in 18
 25 U.S.C. § 3553(a), to the extent they remain applicable at the time the motion is brought. 18
 26 U.S.C. § 3582(c)(1)(A). Second, the Court must find "extraordinary and compelling reasons" to
 27 release a defendant from Bureau of Prisons ("BOP") custody in a policy statement. Id.

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1 III. Analysis

2 The Court is aware that Defendant is at some increased risk of COVID-19. However,
 3 Defendant has not met his burden to establish that he is no longer a danger to the public. While
 4 Defendant argues that his previous convictions are stale and did not count toward his sentencing
 5 range, criminal history is an indicator of potential danger to the public. The factors to determine
 6 danger to the community when considering release of a defendant pending trial are helpful here.
 7 Those factors include

- 8 (1) the nature and circumstances of the offense charged, including whether the
 offense is a crime of violence . . . or involves a minor victim or a controlled
 substance, firearm, explosive, or destructive device;
- 9 (2) the weight of the evidence against the person;
- 10 (3) the history and characteristics of the person, including
 - 11 (A) the person's character, physical and mental condition, family ties, employment,
 financial resources, length of residence in the community, community ties, past
 conduct history relating to drug or alcohol abuse, criminal history, and record
 concerning appearance at court proceedings; and
 - 12 (B) whether, at the time of the current offense or arrest, the person was on
 probation, on parole, or on other release pending trial, sentencing, appeal, or
 completion of sentence for an offense under Federal, State, or local law; and
- 13 (4) the nature and seriousness of the danger to any person or the community that
 would be posed by the person's release.

14 18 U.S.C. § 3142(g). The Court is impressed by Defendant's ability so far to avoid any
 15 disciplinary infractions while incarcerated. However, the factors weigh in favor of a finding that
 16 Defendant poses a danger to the community.

17 The nature of the crime is serious. To show he is not a danger to the public, Defendant
 18 argues that no shots were fired when he robbed the bank and the stolen money was recovered.
 19 However, Defendant and his co-defendant entered the bank with guns and masks, jumped over
 20 the counter, and told everyone to get down and not move. That statement is easily interpreted as
 21 a death threat to those in the bank. This crime of violence impacted people in a way that could
 22 not be alleviated by recovery of the stolen money. Lewis's criminal history also weighs against
 23 release. Lewis has assaulted a police officer, caused harm while driving under the influence,
 24 failed to appear, and illegally possessed weapons, among other convictions. Lewis's argument
 25 that home confinement would compensate for any potential danger he poses to the public fails
 26 because Lewis was under sentence when he committed the instant offense. Lewis's past does not
 27

1 provide evidence that a sentence including home confinement or supervised release is sufficient
2 to deter his criminal behavior. Lewis has not met his burden to show that he would not pose a
3 danger to the public if he were to be released. Therefore, his motion is denied.

4 Additionally, the Bureau of Prisons (“BOP”) has made great strides in protecting
5 prisoners from COVID-19. The BOP has suspended all visitations while adding phone time for
6 inmates, limited movement to prevent congregations, performed COVID-19 screenings for all
7 new intakes, and suspended all staff training and travel. BOP MODIFIED OPERATIONS,
8 https://www.bop.gov/coronavirus/covid19_status.jsp (last visited Jan. 27, 2021). The BOP has
9 also emphasized home confinement, even without judicial interference, for those at high risk and
10 has “significantly increased its placement of offenders on home confinement.” FREQUENTLY
11 ASKED QUESTIONS REGARDING POTENTIAL INMATE HOME CONFINEMENT IN RESPONSE TO THE
12 COVID-19 PANDEMIC,
13 <https://www.bop.gov/coronavirus/faq.jsp#:~:text=Since%20the%20release%20of%20the,of%20offenders%20on%20home%20confinement> (las visited Jan. 27, 2021). Finally, the BOP has
14 begun vaccinating both staff and inmates and “leads all jurisdictions and Federal entities in its
15 rate of vaccination utilization.” COVID-19 VACCINATION EFFORTS COMMENDED,
16 https://www.bop.gov/resources/news/20210116_covid_vaccine_efforts_commended.jsp (last
17 visited Jan. 27, 2021). As a result of these measures, FCI Victorville Medium I, the facility in
18 which Lewis is housed, has seen only two inmate deaths from COVID-19 out of 989 total
19 inmates. FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Jan. 27,
20 2021). The BOP has taken measures to protect inmates and there is no indication that Lewis
21 would be any more protected if he were released as COVID-19 continues to spread. See
22 generally Amy Goldstein, Isaac Stanley-Becker, and Lauren Meckler, Biden Says Death Toll
23 from Pandemic Likely will top 500,000 Next Month, Says it will Take Months ‘For us to Turn
24 Things Around”, WASHINGTON POST (Jan. 21, 2021)
25 https://www.washingtonpost.com/health/biden-coronavirus-executive-actions/2021/01/21/9a4ab954-5b56-11eb-8bcf-3877871c819d_story.html (explaining President
26 Biden’s concerns that our efforts to thwart the virus will take months to make an impact).

Having considered the relevant factors, the Court finds that Lewis should serve the full sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and avoid unwarranted sentencing disparities. 18 U.S.C. § 3553(a). Therefore, Lewis's motion is denied.

IV. Conclusion

7 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Order Reducing
8 Sentence or Modifying Judgment (#189) is **DENIED**.

9 Dated this 28th day of January, 2021.



Kent J. Dawson
United States District Judge